BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

LORRENI	A L. JARRELL Claimant	}
VS.	Ciaimani)) Decket No. 175 426
WASTE MANAGEMENT OF WICHITA) Docket No. 175,426
AND	Respondent	}
CNA	Instrumenta Coming	}
AND	Insurance Carrier	}
WORKER	S COMPENSATION FUND	}

ORDER

Respondent appeals from a preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes dated January 18, 1996.

Issues

The single issue raised by the respondent in its Application for Review is whether the Administrative Law Judge exceeded her jurisdiction in ordering the respondent to pay attorney fees in the amount of \$400.00 to claimant's attorney for services performed for the claimant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the briefs submitted by the parties, the Appeals Board finds as follows:

This matter came on before the Administrative Law Judge on a Form E-3 Application for Preliminary Hearing requesting a change in claimant's authorized physician from Dr. Harry A. Morris. This is a post-award request from an Award entered by Special Administrative Law Judge William F. Morrissey dated May 26, 1995. Contained in the Award was the finding that future medical benefits will be awarded only upon proper application to and approval by the Director. Both respondent and claimant filed a timely appeal from that Award to the Appeals Board. The Appeals Board heard that appeal on September 5, 1995 and a decision has not yet been rendered.

IT IS SO ORDERED

The Administrative Law Judge later granted claimant's post-award request for a change in authorized physician by the preliminary hearing Order dated January 18, 1996. Additionally, she ordered respondent to pay claimant's attorney \$400.00 in attorney fees. Respondent appeals only the question of whether the Administrative Law Judge exceeded her jurisdiction in ordering attorney fees paid to the claimant's attorney. Respondent's principle argument is that because the preliminary hearing statute, K.S.A. 44-534a, does not contain a provision that allows an award of attorney fees, the Administrative Law Judge does not have jurisdiction to grant a request for attorney fees.

In the case at hand, compensability of the claim is not an issue that has been raised by either the claimant or the respondent on appeal before the Appeals Board. Therefore, during the period of time an award is pending review by the Appeals Board, medical compensation shall be paid in accordance with the award of the Administrative Law Judge and shall not be stayed pending such review. Claimant may request a preliminary hearing to enforce this provision pursuant to K.S.A. 44-534a. See K.S.A. 44-551(b)(2)(C).

A request for attorney fees is authorized by K.S.A. 44-536(g) which provides in part:

"In the event any attorney renders services to an employee . . . subsequent to the ultimate disposition of the initial and original claim, and in connection with an application for review and modification, a hearing for additional medical benefits, or otherwise, such attorney shall be entitled to reasonable attorney fees for such services If such services involve no additional award of compensation, the director shall fix the proper amount of such attorney's fees in accordance with this subsection and such fees shall be paid by the employer"

The Appeals Board finds that K.S.A. 44-536(g) authorizes the Administrative Law Judge to order attorney fees to be paid by the respondent to claimant's attorney in a post-award proceeding. Accordingly, the Administrative Law Judge did not exceed her jurisdiction in ordering attorney fees paid to claimant's attorney. The Appeals Board, therefore, affirms the preliminary hearing Order of the Administrative Law Judge.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge Nelsonna Potts Barnes dated January 18, 1996, is affirmed in all respects.

II IO OO ONDERED.
Dated this day of March 1996.
BOARD MEMBER
BOARD MEMBER
BOARD MEMBER

c: Steven Foulston, Wichita, Kansas Eric Lanham, Kansas City, KS Marvin Appling, Wichita, Kansas Nelsonna Potts Barnes, Administrative Law Judge Philip S. Harness, Director